IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

XAVIER A. AUSTIN, TDCJ #1812666,	§ § §	
Petitioner,	§ § §	
v.	§ §	CIVIL ACTION NO. H-15-3424
LORIE DAVIS, Director, Texas Department of Criminal Justice - Correctional Institutions Division,	§ § § § §	
Respondent.	§ §	

ORDER

On June 28, 2016, the court granted the respondent's motion for summary judgment and dismissed the federal habeas corpus Petition filed by state inmate Xavier A. Austin as barred by the governing one-year statute of limitations.   Now pending is Petitioner's Motion for Reconsideration (Docket Entry No. 19). Because the motion is filed within twenty-eight days of the final judgment, it is governed by Rule 59(e) of the Federal Rules of Civil Procedure.
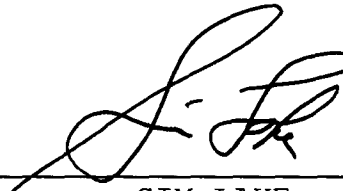
"Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly." Templet v. HydroChem Inc., 367 F.3d 473, 479 (5th Cir. 2004) (citation omitted). A Rule 59(e) motion "must 'clearly establish either a manifest error of law or fact or must present newly discovered

evidence.'" <u>Ross v. Marshall</u>, 426 F.3d 745, 763 (5th Cir. 2005) (quoting <u>Simon v. United States</u>, 891 F.2d 1154, 1159 (5th Cir. 1990)). Austin does not meet that burden. Instead, he raises arguments that were raised and considered previously before the judgment issued. A Rule 59(e) motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment. <u>Templet</u>, 367 F.3d at 479 (citing <u>Simon</u>, 891 F.2d at 1159). None of Austin's arguments demonstrate that the dismissal order was entered in error or that he is entitled to relief under Rule 59(e).

Accordingly, it is **ORDERED** that Petitioner's Motion for Reconsideration (Docket Entry No. 19) is **DENIED**.

The Clerk shall provide a copy of this Order to the parties.

SIGNED at Houston, Texas, this 2d th day of August , 2016.

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SIM LAKE
UNITED STATES DISTRICT JUDGE